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Shahab Hashemi - October 7, 2021

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4 IN RE:  
5  
6 CUSTOMS AND TAX ADMINISTRATION OF  
7 THE KINGDOM OF DENMARK  
(SKATTEFORVALTNINGEN) TAX REFUND  
SCHEME LITIGATION  
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# EXAMINATION OF

16 SHAHAB HASHEMI

17 DATE: October 7,

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6 EXAMINATION BY MR. OXFORD:

7 Q Good morning.

8 I guess it's afternoon where you  
9 are, Mr. Hashemi?

10 A Just about, yes.

11 MR. BINDER: I'm sorry. Neil,  
12 before we begin, I just want to --  
13 the court reporter, we want to revi  
14 and sign this transcript. Thank yo

15 Q Just before I get to my questions,  
16 Mr. Hashemi, I just have one objection to put  
17 on the record.

18 ED&F Man produced to us late Friday  
19 night some 60,000 pages of documents, about  
20 11,000 documents, which appear to be accounts  
21 from BNP and SEB, two of ED&F Man's  
22 custodians or sub-custodians in this case.

23 We've been requesting these documents for at  
24 least 18 months and have been told they  
25 didn't exist.

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1                   ED&F Man Capital Markets is also  
2 known as ED&F MCM?

3                   A    It is referred to as MCM.

4                   Q    Okay. So if I refer in my  
5 questions to ED&F or ED&F MCM, I'm referring  
6 to the same entity, ED&F Man Capital Markets.

7                   Do you understand that?

8                   A    I understand.

9                   Q    And the parent company of that  
10 entity is ED&F Man Holdings, Limited.

11                  Correct?

12                  A    I believe the ultimate parent to be  
13 ED&F Man Holdings.

14                  Q    And ED&F used to have an affiliate  
15 they operated in Dubai.

16                  Correct?

17                  A    Sorry? Could you ask the question  
18 again?

19                  Q    Sure.

20                  ED&F used to have an affiliate that  
21 operated out of Dubai.

22                  Correct?

23                  A    There was a subsidiary of the  
24 ultimate parent that operates in Dubai.

25                  Q    And that was known as MPT Dubai or

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1 Man Professional Trading Dubai.

2                   Correct?

3                   A    Yes.

4                   Q    Okay.

5                   A    I believe the entity was ED&F Man  
6 Professional Trading Dubai.

7                   Q    Okay. So I'll refer to that as  
8 "ED&F Dubai" or "MPT Dubai."

9                   Will we be on the same page if I  
10 describe it thus?

11                  A    Yes.

12                  Q    ED&F also --

13                  A    Sorry, Mr. Oxford. I think  
14 Mr. Binder was trying to say something.

15                  MR. BINDER: MPT Dubai, not ED&F,  
16 since it -- okay, let's just have, so as  
17 not to confuse things. If you want to  
18 refer to it in a shorthand, "MPT Dubai"  
19 is how we refer to it. I think it  
20 would -- I think it would be clearer  
21 that way.

22                  MR. OXFORD: Okay. Well, I have  
23 the witness' answer. It seems pretty  
24 clear to him.

25                  A    I would prefer if -- Mr. Oxford, I

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1 would prefer if you would refer to it as "MPT  
2 Dubai."

3 Q Okay. I'll do my best. But when I  
4 refer to it as "ED&F Dubai," please  
5 understand that I'm asking you about  
6 MPT Dubai.

7 Okay?

8 MR. BINDER: Objection.

9 Q Understood?

10 A I would prefer if you could use  
11 MPT Dubai, but I understand what you said.

12 Q Okay. Thank you.

13 ED&F also had an affiliate in  
14 Switzerland called Volcafe.

15 Correct?

16 A There was a subsidiary of the  
17 ultimate parent company in Switzerland.

18 Q Called Volcafe.

19 Correct?

20 A Called Volcafe, correct.

21 Q Is Volcafe still operational today?

22 A I don't know.

23 Q Is MPT Dubai still operational  
24 today?

25 A I also don't know.

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1           A    An interdealer broker transacts  
2    with other counterparties, but more  
3    specifically, would source shares or  
4    derivatives on instruction.

5           Q    Did ED&F's interdealer broker ever  
6    hold any proprietary positions 2012 through  
7    2015?

8                    MR. BINDER: Objection to form,  
9                    beyond the scope of his role as a  
10                   corporate representative for ED&F Man  
11                   Capital, Limited.

12           Q    Do you know the answer? Yes or no,  
13           sir?

14           A    I don't know the answer.

15           Q    Was Volcafe also an interdealer  
16           broker?

17           A    I believe it was.

18           Q    Was MPT Dubai also an interdealer  
19           broker?

20           A    I do not believe MPT Dubai was an  
21           interdealer broker.

22           Q    What's that belief based on, sir?

23           A    I have seen some prospective  
24           documents of MPT Dubai.

25           Q    Are you familiar with a service

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1 Q Okay. We've talked about the fees  
2 to the investment managers.

3 You're aware that one of the topics  
4 you're designated on today is the fees by  
5 ED&F Man in connection with the trading in  
6 Danish shares?

7 A Yes, I recall the fees being one of  
8 the topics.

9 Q Can you tell me generally how ED&F  
10 structured the fees that it charged the  
11 defendant plans in connection with the  
12 trading in Danish shares?

13 A So, like many of its services, many  
14 of its desks, ED&F Man charges a fee to its  
15 clients, and -- for the services that it  
16 provides.

17 And in this case, for the equity  
18 finance desk, the services or the fees that  
19 would be charged to the client would be for  
20 execution services, custodian services, and,  
21 for example, financing of the transactions.

22 Q So just picking up on the last part  
23 of your answer, is it correct that ED&F  
24 provided financing or lending to the  
25 defendant plans so that they could make their

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1 trades in Danish securities?

2 A Excuse me. One of the services the  
3 equity finance desk provided was securities  
4 financing to the pension plans.

5 Q So it lent money -- in essence, it  
6 lent money to the plans so they could buy the  
7 shares.

8 Correct?

9 MR. BINDER: Objection to form.

10 A ED&F Man would receive the funds  
11 that were allocated from the group treasury  
12 and use them as working capital to provide  
13 the service of securities financing to the  
14 pension plans to acquire shares.

15 Q Okay. And just in layman's terms,  
16 because I'm a simple country lawyer, does  
17 that mean that ED&F Man's equity finance desk  
18 loaned or extended credit to the defendant  
19 plans so that they could purchase the Danish  
20 securities?

21 MR. BINDER: Objection, asked and  
22 answered, vague.

23 A The equity finance desk used funds  
24 that was allocated to them from the process  
25 that I mentioned to provide securities

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1 financing services to the pension plans.

2 They acquired shares.

3 Q And did those securities financing  
4 services, including -- include extending  
5 credit to the plans so they could buy the  
6 Danish shares?

7 MR. BINDER: Objection to form.

8 A I don't know.

9 Q So you know the term "securities  
10 financing," but you don't know what security  
11 financing actually is?

12 MR. BINDER: Objection, objection.

13 Misstates testimony. It's also  
14 harassment.

15 MR. OXFORD: It's not harassment.

16 Q What's securities financing, sir,  
17 in your last answer? What does it mean?

18 A It means providing the capital for  
19 the pension plans to acquire shares.

20 Q So the pension plans don't have the  
21 money to buy shares, so ED&F Man provides  
22 that.

23 Correct?

24 A One of the services that ED&F Man  
25 provided was securities financing for the

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1 pension plans to acquire shares.

2 Q Okay. But just -- again, I'm just  
3 trying to make sure we have a clear  
4 understanding, because you're a banker sir,  
5 and I'm just a simple lawyer.

6 Does that mean that ED&F loaned  
7 money to the plans so they could buy the  
8 Danish shares?

9 MR. BINDER: Objection to form.

10 Objection to counsel testifying.

11 MR. BLESSINGTON: Object as to  
12 form.

13 A ED&F Man provided securities  
14 financing to the pension plans, Mr. Oxford.  
15 I don't know how else to say it, to acquire  
16 shares.

17 Q How did it provide that financing  
18 to the plans?

19 A Through the funds that were drawn  
20 down from group treasury, to provide it to  
21 acquire the shares.

22 Q Okay. But that's kind of the  
23 source of where the funds came from.

24 I'm asking how, mechanically, in  
25 the securities financing transaction, the

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1 ED&F Man provided financing to the plans?

2 A Of the financing that the equity  
3 finance desk would receive, a budget, they  
4 would allocate a portion of that as available  
5 to the -- to each of the pension plans and  
6 their trading structures.

7 Q Beyond that, do you have anything  
8 to add to your answer?

9 A I do not, no.

10 Q Do you know the terms on which the  
11 financing was provided by ED&F to the  
12 defendant plans?

13 A So what do you mean?

14 Q Were there terms and conditions?  
15 Did ED&F charge interest?

16 A So ED&F Man would pass through the  
17 costs of drawing down those funds to  
18 the -- to the pension plans.

19 Q So, in essence, ED&F would charge  
20 interest to the plans on the securities  
21 financing?

22 A They would charge interest that was  
23 charged to them by group treasury.

24 Q Do you know offhand what that  
25 interest rate was?

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1 MR. BINDER: Objection to form.

2 A I do not, no.

3 Q Is it correct that, generally  
4 speaking, ED&F charged the plans fees at two  
5 stages of the Danish securities transactions?  
6 Specifically they charged an "up-front" fee  
7 and a "behind" fee.

8 Are you familiar with those terms?

9 A I'm familiar with the terms of an  
10 "up-front" fee and a "behind" fee.

11 Q Are you familiar with those terms  
12 in the context of ED&F's fees charged to the  
13 defendant plans in this case?

14 A I'm sorry. Could you say that  
15 again?

16 Q Sure.

17 Are you familiar with those terms  
18 "up-front fee" and "behind fee" and how they  
19 worked in the context of ED&F's fees charged  
20 to the defendant plans in this case?

21 A I'm familiar with the up-front fees  
22 and the behind fees charged to the pension  
23 plans in the scope of this.

24 Q Okay. Can you tell me what you  
25 know about that topic?

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1           A    Of course. So my understanding is  
2    that the up-front fees were charged to the  
3    pension plans and covered -- the fees covered  
4    certain costs, such as exchange fees, and it  
5    covered -- I've seen, Mr. Oxford, in fee  
6    agreements that has reference to a custody  
7    fee.

8           And the up-front fee is charged to  
9    the pension plans prior to the trading  
10   strategy maturing. The behind fee, as I  
11   understand it, is a fee that is charged to  
12   the pension plans following the trading  
13   strategy maturing, and any withholding tax  
14   that is received by the pension plan.

15          Q    Is it fair to say that the up-front  
16    fee that ED&F charged to the defendant plans  
17    was typically 1 percent of the gross  
18    dividend?

19          A    I believe the up-front fee varied,  
20    and it was on a -- yeah, I don't think it was  
21    constant as you're referring to it. And I  
22    believe it also, as it captured exchange  
23    fees, for example, it would have varied on a  
24    case-by-case basis.

25          Q    Okay. Do you have any

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1 understanding of what it varied between?  
2 What the range of up-front fees was charged  
3 to the various defendant plans?

4 A I don't know.

5 Q Is it fair to say that the behind  
6 fee that ED&F charged the plans ranged from  
7 27 to 50 percent of the pension plan's  
8 transaction profit?

9 A From the spreadsheets that I saw, I  
10 recall that the behind fees would be  
11 calculated after the trading strategy  
12 matured, as I mentioned, any withholding tax  
13 to be received by the pension plans, and  
14 covered all of the costs and -- associated  
15 with it.

16 I don't know of the range,  
17 Mr. Oxford. However, I don't recall seeing  
18 any that exceeded 50 percent.

19 Q Okay. Can I ask you to turn to  
20 Tab -- Exhibit 4151, please? First binder,  
21 Tab 29?

22 A Okay.

23 Q Can I ask you to turn to Page 39 of  
24 that document? And I direct your attention  
25 to Paragraph 140.

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5  
6 CUSTOMS AND TAX ADMINISTRATION OF  
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14 REMOTE VTC VIDEOTAPED DEPOSITION UNDER ORAL  
15 EXAMINATION OF  
16 SHAHAB HASHEMI  
17 VOLUME 11  
18 DATE: October 8, 2021

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REPORTED BY: MICHAEL FRIEDMAN, CCR

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1 P R O C E E D I N G S

2

3 S H A H A B H A S H E M I,,

4 called as a witness, having been first  
5 duly sworn according to law, testifies as follows:

6 \* \* \* \* \*

7 CONTINUED EXAMINATION BY MR. OXFORD:

8 Q Good afternoon and good morning,  
9 Mr. Hashemi.

10 Could you please turn back to  
11 Binder 1, Tab 28, which is the Notice of  
12 Deposition?

13 A Okay.

14 Q You can turn to Topic 23, please.

15 A Okay.

16 Q Topic 23 concerns Annex E.

17 Correct?

18 A So I missed the beginning of your  
19 sentence.

20 Q Topic 23 concerns Annex E.

21 Correct?

22 A I can see that, yes.

23 Q Great.

24 Tell me what you did to prepare  
25 yourself on this topic.

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1 Mr. Oxford?

2 Q It's just a general question.

3 ED&F Man's position is that Annex E  
4 references tax vouchers that are inaccurate.

5 I'm asking for your understanding,  
6 as a corporate representative on a notice  
7 topic here, whether you have any  
8 understanding of what those inaccuracies are?

9 A The inaccuracies are that the tax  
10 vouchers in Annex E were incorrectly  
11 produced.

12 Q Can you explain what you mean,  
13 "incorrectly produced?"

14 A What I mean is that they should not  
15 have been produced.

16 Q Why should they not have been  
17 produced?

18 A Because they are inaccurate.

19 Q In what sense are they inaccurate?

20 A Could you repeat the question,  
21 please?

22 Q In what sense are they inaccurate?

23 A Because -- they were inaccurate  
24 because the pension plans weren't due a  
25 dividend from the company.

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1 had, right?

2 MR. OXFORD: Understood, clear, no  
3 suggestion to the contrary. I think we  
4 just were trying to clear up  
5 certain -- basically version control  
6 between the version we had marked  
7 yesterday and a version of the same  
8 document, which I freely acknowledge was  
9 negotiated and drafted between counsel  
10 for SKAT in England and counsel for  
11 ED&F Man in England.

12 (Whereupon the above mentioned was  
13 marked for Identification.)

14 Q Okay. So with that violate  
15 agreement in place, can you take a look,  
16 please, at Exhibit 4430, Mr. Hashemi?

17 A Okay. I have it in front of me.

18 Q Can you confirm that is, in fact,  
19 the version of the -- that is, in fact, a  
20 version of the draft Schedule of Agreed Facts  
21 that you reviewed in preparation for your  
22 deposition?

23 A (Witness reviewing.)

24 Yes, it appears to be the version  
25 that I had reviewed.

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1 Q Okay. Are you aware of any  
2 incorrect statements in this document?

3 A (Witness reviewing.)

4 I'm not aware of any incorrect  
5 statements in this document.

6 Q Okay. So, from ED&F's point of  
7 view, the statements in here, you believe,  
8 are accurate?

9 A This document reflects ED&F Man's  
10 position.

11 Q Okay. Thank you. That's helpful.  
12 So can I ask you just to quickly  
13 turn to Paragraphs 20 and 2 -- sorry, 21 and  
14 22, which are on Page 6 of the document?

15 A Okay.

16 Q And the heading is "B-5 Contractual  
17 Documentation."

18 Do you see that?

19 A I do.

20 Q And then it lists five agreements  
21 that were -- withdrawn.

22 It says, "In relation to the  
23 services provided by ED&F Man, ED&F Man and  
24 each pension plan or GP."

25 Do you know what the reference to

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1 "GP" is?

2 A I believe it's Gibraltarian  
3 partnerships.

4 Q "In relation to the services  
5 provided by ED&F Man, ED&F Man on the one  
6 hand, and on the other, each pension plan or  
7 Gibraltarian partnership executed or agreed  
8 to the terms of the following documents," and  
9 then it lists a custody agreement, the  
10 security and setoff date, the ISDA agreement,  
11 the fee agreement letter, and ED&F Man's  
12 terms of business.

13 Do you see that?

14 A I do see that.

15 Q And then 22 goes on to say that  
16 "some but not all pension plans also executed  
17 a global master securities lending agreement  
18 with ED&F Man."

19 Do you see that?

20 A I do see that.

21 Q All right. I take it from your  
22 general comments that that -- those  
23 statements in 21 and 22 are accurate from  
24 ED&F Man's perspective?

25 A I believe them to be accurate.

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1 Q And that's a complete list of the  
2 agreements governing the relationship between  
3 ED&F Man and the defendant pension plans?

4 MR. BINDER: Objection to form.

5 A (Witness reviewing.)

6 I believe them to be a list of  
7 agreements executed between ED&F Man and each  
8 of the pension plans.

9 Q Okay. And do you believe it to be  
10 a complete list?

11 MR. BINDER: Objection to form.

12 A I'm not sure. I don't know.

13 Q Okay. New topic.

14 Are you familiar with the term  
15 "payment agent," sir, in the context of this  
16 case?

17 A Could you -- can you explain to me  
18 what you mean by "payment agent?"

19 Q Yeah, sure. I'm just referring to  
20 the agent of the pension plan that submitted  
21 reclaim applications to SKAT.

22 A Okay. I think I know the term "tax  
23 reclaim agent."

24 Q Okay. We're talking about the same  
25 thing.

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1           A    From my preparations for this  
2 deposition, I understand that when the  
3 withholding tax was paid, this was either  
4 received by ED&F Man from the tax reclaim  
5 agent, which I understand is the more common  
6 way.

7                   I believe occasionally it was  
8 received from SKAT directly, and sometimes it  
9 went direct to the pension plans.

10           Q    Okay. And when it went direct to  
11 the pension plans, did it go to their pension  
12 plan accounts at ED&F?

13           A    I don't believe it was received via  
14 ED&F Man.

15           Q    Okay. And in the circumstances  
16 where the withholding tax reclaim was  
17 received by ED&F Man from the tax reclaim  
18 agent, was ED&F involved in the distribution  
19 of the proceeds of that reclaim?

20                   MR. BINDER: Objection to form,  
21 vague.

22           A    When -- from the documentation that  
23 I've seen, when the withholding tax was  
24 received, it was credited in the pension  
25 plans cash account.

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1 says.

2 Q Okay. And then there's a  
3 spreadsheet at the back.

4 Can you just take a moment to  
5 review the spreadsheet and tell me whether  
6 you've ever seen it before?

7 A Sorry. Where am I looking for the  
8 spreadsheet?

9 Q It's attached to the letter, sir.

10 A So in this -- in the binder in  
11 front of me --

12 Q We even have it -- I'm told we  
13 might even have it in a native Excel.

14 A Okay.

15 Q So this is Exhibit 4259.

16 A Okay. It is -- I have it open.

17 Q Great. Just take a moment and let  
18 me know if you've ever seen this before.

19 A (Witness reviewing.)

20 MR. BINDER: I'm going to object  
21 because you're showing this to him in a  
22 format of an Excel. So, to the extent  
23 he has -- he has seen this document in  
24 the form it was attached to the letter,  
25 I would -- I would just want the record

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1 to be clear that he's viewing this in an  
2 Excel format, not as it would have been  
3 attached originally as a PDF or however  
4 it was delivered.

5 A (Witness reviewing.)

6 MR. OXFORD: Mr. Binder, I can note  
7 for the record that your objection is  
8 without foundation. Because, as  
9 provided to us, I understand there was  
10 not a PDF, but an Excel file.

11 MR. BINDER: All I'm saying is  
12 I -- if he has seen it, he'll have to  
13 answer that. I don't know whether he  
14 would have seen it in Excel or in PDF.  
15 So it's just -- to the extent that the  
16 formatting impacts his answer, I just  
17 want that noted.

18 Mr. Hashemi, if you can answer  
19 Mr. Oxford's question, if you're  
20 familiar with this document?

21 A Yeah, I'm just going through the  
22 tabs.

23 (Witness reviewing.)

24 Mr. Oxford, this spreadsheet looks  
25 familiar, and it's difficult for me to

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1 identify if I've seen this exact version,  
2 and -- but the contents of this spreadsheet  
3 look familiar to me.

4 Q Okay. Can you tell us if  
5 this -- the data in this spreadsheet is  
6 accurate?

7 A (Witness reviewing.)

8 If it's the same spreadsheet that  
9 I've seen, I think it might be. I believe  
10 the data in this document is accurate.

11 Q Okay. So just looking -- are you  
12 on the first tab, sir, which I believe is  
13 Acer?

14 A Yeah.

15 Q Okay. Do you see there's a number  
16 of column headings about two-thirds of the  
17 way across the page. There's one called  
18 "Trading Loss on Share Acquisitions and  
19 Hedging Transactions."

20 A Column I.

21 Q Yes.

22 A Yes, I see Column I.

23 Q How was -- well, withdrawn.

24 What information is contained in  
25 that column?

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1                   vague.

2                   A     Mr. Kaplan, I don't know the answer  
3                   to your broad question. But if you'd like to  
4                   bring up a specific confirmation, I can try  
5                   and point it out to you.

6                   Q     We can do that. I'm trying to do  
7                   this quickly as per our earlier discussion.  
8                   Let me ask you this.

9                   Do you think a customer of ED&F Man  
10                  who receives a confirmation from ED&F Man can  
11                  rely on that confirmation as being accurate?

12                  MR. BINDER: Objection.

13                  MR. OXFORD: Objection to form.

14                  A     I don't know.

15                  Q     And do you have any knowledge as  
16                  to -- withdrawn.

17                  You've identified various tax  
18                  vouchers earlier and there were discussions.  
19                  And again, I'm trying to do this quickly.

20                  You know what I mean by "the tax  
21                  voucher."

22                  Correct?

23                  A     I do know what you're referring to  
24                  when you say "tax vouchers."

25                  Q     And if I understood your testimony

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1       earlier, you said that those tax vouchers  
2       were prepared by ED&F Man?

3           A    Those tax vouchers were prepared by  
4       ED&F Man.

5           Q    Do you believe that a customer  
6       is -- can rely on tax vouchers prepared by  
7       ED&F Man?

8                    MR. BINDER: Objection, beyond the  
9       scope of the notice topics.

10          A    I don't know.

11          Q    Okay. Do you know whether or not  
12       the former ED&F Man associated persons or  
13       people who worked at the equity finance desk  
14       received severance?

15                    MR. BINDER: Objection.

16          A    I don't know.

17          Q    Are you aware of what the financial  
18       arrangement was prior to the closing of the  
19       equity financing desk between the various  
20       people who worked at the desk and ED&F Man?

21          A    In line with the other desks in  
22       ED&F Man, there was a P&L for the equity  
23       finance desk.

24          Q    Did you say "CMO?"

25          A    Sorry. No. Let me start again.



Via US Mail

John McGoey, Esq.  
Hughes Hubbard & Reed  
One Battery Park Plaza  
New York, NY 10004

Re: **IN RE:  
CUSTOMS AND TAX ADMINISTRATION OF  
THE KINGDOM OF DENMARK  
(SKATTEFORVALTNINGEN) TAX REFUND  
SCHEME LITIGATION**

**MASTER DOCKET 18-MD-2865 (LAK)**

**CASE NO. 18-CV-09797**

Dear Mr. McGoey;

In connection with the deposition taken on October 7, 2021 & October 8, 2021 in the above mentioned matter; attached please find the signed errata sheets as executed by Shahab Hashemi.

If you need any further assistance, please do not hesitate to contact our office.

Sincerely,

A handwritten signature in blue ink that appears to read "Victoria Jones".

Victoria Jones

cc:

Counsel of Record with Attachments